

JUDGES' RULES

RULE 76

RULES PROMULGATED UNDER THE *WINDING-UP AND RESTRUCTURING ACT*, RSC. 1985, C. W-11

PETITION TO WIND UP COMPANY

Title of Petition

76.01 A petition for the winding up of a company by the court, and any notice, affidavit and other document in the proceeding, shall be entitled "in the matter of the *Winding-up and Restructuring Act*" and of the company, naming the company to which the petition relates.

Service of Petition, Etc.

76.02 A copy of a petition endorsed with, or accompanied by a notice of an application for a winding-up order and copies of any affidavit and other material upon which the petitioner proposes to rely in support of the application, shall, unless the petition is presented by the company, be served at the principal or last known principal office or place of business of the company, if it can be found, upon any member, officer or servant of the company, there, or when a member, officer or servant cannot, after due diligence, be found there, then in the manner provided for service on a company of ordinary process, or in such other manner as the court may direct.

Contributories, Etc. Entitled to Copies of Papers, Etc.

76.03 Any contributory or creditor of the company shall be entitled to be furnished by the lawyer for a petitioner, or by a petitioner if the contributory or creditor presents a petition in person, with copies of the petition, affidavit and other material or of any portion thereof as is required, within twenty-four hours after the same is demanded, on paying the sum of twenty cents per page.

WINDING-UP ORDER

Order to Be Advertised and Served

76.04 Every order for the winding up of a company by the court, or subject to its supervision, shall within fifteen days after the date thereof, be advertised in a newspaper having a general circulation in the place where the head office or principal place of business of the company is situated, and in The Canada Gazette or The Royal Gazette as the court may direct, and shall be served upon any person and in such manner as the court may direct.

Entry of Order, Etc.

- 76.05** (1) A winding-up order shall be entered with the Prothonotary within seven days after it is made up, and in default thereof any other person interested in the winding up may draw the order and the court may give the carriage and prosecution of the order to such person.
- (2) Upon a winding-up order being entered, the person having the carriage of the proceeding shall cause a notice of application to be issued forthwith and served upon all parties who have appeared on the hearing of the petition.
- (3) On the application, the court may fix a time and place for the appointment of a liquidator, the proof of debts, and the list of contributories to be brought in, and give directions for any advertisement and notice, and generally as to the proceeding or parties to attend thereon.

Evidence, Etc.

- 76.06** To enable the court to determine the most satisfactory method of giving notice of an application to appoint a liquidator and the parties to whom notice should be given, a petitioner or other person having the carriage of the proceeding shall furnish to the court the best evidence, obtainable by them on reasonable enquiry and to the satisfaction of the court, as to the names of the creditors, contributories and shareholders respectively and their places of residence, and the court may require any further evidence on these or other points to be furnished.

Provisional Liquidator

- 76.07** Where it is desired to appoint a provisional liquidator, an application for that purpose may be made at any time after the presentation of a petition for winding up, without notice or advertisement unless the court otherwise directs, and the court may appoint the provisional director, if it thinks fit, without security.

Winding-Up Order

- 76.08** Notwithstanding the provisions of any other rule, if it appears to the court, upon the presentation of a petition that all proper parties had notice, the court may make an order for winding up the company and the appointment of a liquidator.

LIQUIDATOR

Advertising

- 76.09** When a time and place has been fixed for the appointment of a liquidator, notice of the time and place shall be given to creditors,

contributories and shareholders or members, or advertised in such manner as the court may direct, but the first or only advertisement, if any, shall be published within fifteen days and not less than seven days before the day so fixed.

Contents of Notice

76.10 Notice of the application for the appointment of a liquidator shall give the name, address and occupation of the person proposed to be appointed, and the court may appoint the person named in the notice or any other person, with or without further notice to any person.

Qualifications of Liquidator

76.11 An application for the appointment of a liquidator shall be accompanied by satisfactory evidence of the qualifications and character of the party sought to be appointed as liquidator and of their fitness for the office.

Security

76.12 Unless otherwise ordered by the court, a liquidator shall give security in such manner and in such sum as the court may direct.

Order Appointing Liquidator

76.13 A liquidator shall be appointed by order, which shall

- (a) fix a time within which the liquidator shall give security, unless the liquidator has done so or it has been dispensed with;
- (b) fix the times or periods at which the liquidator is to leave their accounts of receipts and payments at the office of the Prothonotary; and
- (c) direct all monies received by the liquidator to be paid into a chartered bank to the account of the liquidator immediately after their receipt in an account opened therefor, and an office copy of the order shall be lodged with the bank.

Sureties of Liquidator

76.14 A liquidator, if required to furnish security, shall, on each passing of their account and whenever the court requires, satisfy the court that the liquidator's security remains in full force and effect, and in default thereof the liquidator may be required to enter into fresh security as directed.

Death, Etc. of Liquidator

76.15 In case of the death, removal or resignation of a liquidator, another or others shall be appointed in their place as in the case of a first appointment, and the proceeding for the purpose may be taken by any interested party.

Duties of Liquidator

76.16 A liquidator shall, with all convenient speed after being appointed, proceed to make up, continue, complete and rectify the books of account of the company, and shall provide and keep such books of account as are necessary or as the court may direct, for the purpose aforesaid and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by the contributory in respect of any call made under the Act.

Accounts of Liquidator

76.17 The accounts of a liquidator shall be filed in the office of the Prothonotary at such time as may from time to time be required by the court, and the accounts shall, whenever required by the court and upon notice to any party as the court may direct, be passed and verified in the same manner as receivers' accounts.

PROOF OF DEBTS

Advertisement for Debts, Etc.

- 76.18** (1) For the purpose of ascertaining the creditors and claimants of a company and requiring them to come in and prove their debts or claims, such advertisements shall be published as the court may direct.
- (2) The advertisements shall fix a time for the creditors and claimants to send in to the liquidator, their names and addresses, the particulars of their debts or claims, the nature and amount of the security, if any, held by them respectively, with the valuation thereof on oath, and the names and addresses of their lawyers, if any, and the advertisements shall appoint a day for adjudicating thereon.

Proof of Claims

76.19 The creditors and claimants need not attend the adjudication or prove their debts or claims, unless they are required to do so by notice from the liquidator, or any creditor, contributory, shareholder or member of the company, but upon the notice being given they shall come in and prove their debts or claims at the time therein specified or such other

time as the court may allow.

Duties of Liquidator as to Debts and Claims

76.20 A liquidator shall investigate the debts and claims sent in to the liquidator and ascertain, so far as the liquidator is able, which of them are justly due from the company, and the liquidator shall make out and leave with the Prothonotary a list of all debts and claims sent to the liquidator, distinguishing the debts and claims or parts thereof so claimed that are in the liquidator's opinion justly due and proper to be allowed without further evidence from those that in the liquidator's opinion ought to be proved by the creditors, and the liquidator shall make and file with the Prothonotary, prior to the time appointed for adjudication, an affidavit setting forth the debts and claims that in the liquidator's opinion are justly due and proper to be allowed without further evidence.

Claims of Which Liquidator has not Notice

76.21 If by examination of the books, accounts or papers of a company, or by any other means, a liquidator is led to believe that any person is a creditor of or has a claim against the company, for which the party is entitled to rank against the assets of the company, and the party has not sent in notice of their claim to the liquidator, the liquidator shall mention the claim and the probable amount thereof in the affidavit required by Rule 76.20, with the address or supposed address of the person.

Judge May Allow Debts, Etc.

76.22 At the time appointed for adjudicating up on the debts or claims, or at any adjournment thereof, the court may either allow the debts and claims upon the affidavit of the liquidator, or require the same, or any of them, to be proved by any claimant and adjourn the adjudication thereon to a time to be fixed, and the liquidator shall give notice to any creditor whose debts or claims have been allowed.

Service of Notice of Hearing

76.23 Notice of the time and place, fixed for hearing and determining debts and claims of which proof is required, shall be served upon the creditors or claimants asserting the debts or claims, and such other parties, including persons who may be mentioned by the liquidator as a probable creditor or claimant under Rule 76.21, as the court shall direct at least four days before the day so fixed.

Costs of Proof of Claims

76.24 Unless the court otherwise orders, any creditor who comes in and

proves their debt or claim pursuant to notice may be allowed their costs of proving it, and a person unsuccessful in proving a claim may be ordered to pay costs.

LIST OF CONTRIBUTORIES

List of Contributories

- 76.25** (1) A liquidator shall, with all convenient speed after being appointed or at such time as the court shall direct, make out and file with the Prothonotary a list of the contributories of the company.
- (2) A list of contributories shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, the number of shares or extent of interest to be attributed to each contributory, and distinguish the several classes of contributories, and the list may, from time to time by leave of the court, be varied or added to by the liquidator.

Appointment to Settle List, Etc.

- 76.26** Upon the list of contributories being filed with the Prothonotary, the liquidator shall obtain an appointment for the court to settle the same, and shall give at least four days' notice in writing of the appointment to every person included in the list, stating in what character the person is included, and the extent of the liability of the person as a contributory; and in case any variation or addition to the list is at any time made by the liquidator, a similar notice in writing shall be given to every person to whom the variation or addition applies.

Prothonotary's Certificate

- 76.27** The result of the settlement of the list of contributories shall be set out in a certificate made by the Prothonotary, and certificates may be made from time to time for the purpose of stating the result of a settlement down to any particular time, or as to any particular person or stating any variation in the list.

CALLS

Application to Make Call, Etc.

- 76.28** An application to the court, to make a call on any contributory, shall be made by notice stating the proposed amount of the call, which shall be served four days at least before the day appointed for making the application on every contributory proposed to be included in the call, and upon the copy, so served on each contributory, shall be written or printed a memorandum specifying the amount that the contributory will be required to pay upon the basis of the proposed call.

Notice of Intended Call

- 76.29** (1) When the court directs, notice of an intended call may be given by advertisement, and no further notice of the application need be given to any contributory unless the court so orders.
- (2) When notice of an intended call is given by advertisement, notice need not be given of the particular amount required of each contributory and the memorandum specified in Rule 76.28 may be dispensed with.

Contents of Order for Call

- 76.30** An order for a call may direct payment, not merely of the amount of the call, but also of the amounts or balances payable by the respective contributories, or by such of them as may seem proper, and the time and place of payment, provided that a contributory shall not be ordered to pay a larger sum than specified in the memorandum filed on the application without notice to the contributory or their lawyer that a larger sum is to be paid by them; but the court may, upon such notice as may seem just or, if the party appears, then without further notice, cause the memorandum to be amended by increasing the amount, or otherwise, and may direct the liquidator, or other party having the conduct of the proceeding, to pay any additional costs to be thus incurred and make such other order as is just.

Order Where Memo Not Served

- 76.31** Unless it shall seem just and proper, where the memorandum specified in Rule 76.28 is not served either by advertisement or otherwise, an order shall specify merely the amount of the call to be made and shall not direct payment of specific sums by the respective contributories.

Service of Order, Etc.

- 76.32** A copy of an order for a call shall be served forthwith upon each contributory included in the call; and upon each contributory so included, who is not directed by the order itself to pay a specific sum in respect of the call, there shall be served, with the order, a notice from the liquidator, or other party having the conduct of the proceedings for a call, specifying the amount of balance due from the contributory in respect of the call, but an order for a call need not be advertised unless the court directs.

Adjournment of Call Proceedings

- 76.33** (1) At the time of making an order for a call, if the order does not specify the particular sum payable by each contributory included in the call, or if the court otherwise deems it proper, any further

proceeding shall be adjourned until after the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary.

- (2) At the time appointed by an adjournment or upon an application to enforce payment of a call, and upon proof of the service of an order and notice of the amount due as required by Rule 76.32 and the non-payment thereof, an order may be made for any contributory who is in default, or against whom it is thought proper to make the order, to pay the sum that they were respectively required to pay by an earlier order and notice, or any lesser sum that appears to be due from them respectively, and any order may be made that is just and proper for the payment by any contributory of the costs of the adjournment, or further application and order, or of any portion thereof.

Receipt of Bank for Amount of Call

- 76.34** A contributory may deposit with the Prothonotary a receipt of the bank where a call is payable, or of the Prothonotary where the call is payable into court, or of the party authorized by an order to receive such payment, and the receipt shall show the amount paid in respect of the call.

Issue of Non-Payment of Call

- 76.35** Where a contributory is, by an order for a call or by a subsequent order, directed to pay a specific amount in respect of a call, then at the expiration of the time for payment, if a receipt for the payment has not been deposited with the Prothonotary, or if the receipt deposited does not show that the proper amount has been paid, an execution order may, without further order, be issued by the Prothonotary to realize the amount so ordered, or any deficiency appearing from the receipt, and with this may be included any sum for taxed costs where the same can be conveniently included according to the usual practice.

PROCEEDINGS BEFORE THE COURT

Application to be Made in Chambers

- 76.36** Any application under a winding-up order shall be made in chambers, unless the court otherwise directs, and the application shall, unless it is a proper one for an ex parte order, be made upon notice.

Affidavit for Sanction of Compromise, Etc.

- 76.37** (1) An application for the sanction of the court to a compromise or other arrangement with any contributory or other person indebted or liable to a company, or with creditors or persons

claiming to be creditors of a company, shall be supported by an affidavit of the liquidator deposing that the liquidator believes the proposed compromise will be beneficial to the company, stating reasons for their belief and showing, where the state of affairs of such contributory or other person is one of such reasons that the liquidator has investigated the affairs of the contributory or other person and the result of their investigation.

- (2) Any facts supporting the reasons for the liquidator's belief shall, as far as is practicable, be proved, and upon an application any further evidence may be required by the court.

Sanction to Be Testified by Memo

76.38 The sanction of the court under Rule 76.37 shall be testified by a memorandum signed by the Prothonotary on the agreement of compromise or arrangement, unless a party desires to appeal from the decision of the court when an order shall be drawn up and issued for that purpose.

ADVERTISEMENTS

Advertisements

76.39 Where an advertisement is required for any purpose, it shall be published only in the newspaper or other publication, and for such number of times, as is provided by this rule or by order of the court, provided that the court may in any case dispense with any advertisement required by this rule.

REGISTER AND FILE OF PROCEEDINGS

Register of Proceedings

76.40 A Prothonotary shall attend before the court upon a proceeding and shall keep a register of all proceedings in chambers or in court or on appeal in each matter under the Act.

Deposit and Filing of Documents

76.41 Any document or other record, required to be filed in court, shall be filed with the Prothonotary in whose office the petition has been filed.

Custody of Documents Not Filed

76.42 Any order, exhibit, admission, memorandum or other document relating to the winding-up of a company, not required by Rule 76 or the usual practice or the special direction of the court to be filed in court, shall be filed and kept by the liquidator in their own office and shall be produced in court and otherwise as may be required.

Inspection of Documents

76.43 Every contributory, and every creditor whose debt or claim has been allowed, is entitled at all reasonable times to inspect any document filed with the liquidator or Prothonotary in a proceeding under the Act free of charge, and to take copies thereof or extracts therefrom at their own expense, not removing the same from the office where the same is filed, or to be furnished with any copy or extracts on paying for them at a rate not exceeding twenty cents per page.

PROVISIONAL LIQUIDATOR

Provisional Liquidators

76.44 All rules relating to liquidators shall, with any necessary modification, and subject to the direction of the court, apply to any provisional liquidator.

ATTENDANCE AND APPEARANCE OF PARTIES

Attendance and Appearance of Parties

76.45 Any person, on a list of contributories filed with the Prothonotary, or having a debt or claim against a company that is allowed by the court, shall be at liberty, at their own expense, to attend the proceedings on the winding up of the company, and be entitled, upon payment of the costs occasioned thereby, to have notice of any proceeding that they request in writing to have notice of; but if the court is of the opinion that the attendance of any such person at a proceeding has occasioned any additional costs which ought not to be borne by the company, the person may be directed to pay the costs, or a gross sum in lieu thereof, and such person shall not be entitled to attend any further proceeding until the person pays the same, and the liquidator may take any measure to collect the same as the liquidator might take for the collection of any costs awarded by the court.

Appointment of Representative of Class

- 76.46** (1) The court may, from time to time, appoint any one or more of the contributories or creditors to represent, at the expense of the company or otherwise as shall seem proper, all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any proceeding before it relating to the winding up of the company, and may remove any person so appointed.
- (2) In case more than one person is appointed, they shall employ the same lawyer to represent them.
- (3) Costs shall not be allowed against a company to any such person

in respect of any proceeding unless the person is specially requested by the court to attend on the proceeding.

Conditions of Attendance in Chambers

76.47 A contributory or creditor shall not be entitled to attend any proceeding before the court until they have entered their name and address, and the name and address of their lawyer, if any, in a book to be kept for that purpose by the Prothonotary, and until, upon any change of their address or their lawyer, the contributory or creditor has entered in the book their new address, and the name and address of their new lawyer.

SERVICE OF SUMMONS, NOTICES, ETC.

Service by Post

76.48 Service upon any contributory or creditor shall be effected, except when personal or other service is specifically required, by sending any notice, order or other document through the mail, in a postage prepaid letter addressed to the lawyer of the party to be served, if any, or otherwise to the party, at the address entered or last entered pursuant to Rule 76.47 or, if no address has been so entered, at the address of the party appearing on the records of the company, and the notice or order or other proceeding shall be considered as served at the time it ought to be delivered in due course of delivery by the post office, and notwithstanding it may be returned by the post office, the court shall not be obliged to receive proof on oath of the time but may act on its own knowledge of the course of the mails, or on any information as it may think reliable.

TERMINATION OF WINDING UP

Balance Sheet of Liquidator

76.49 Upon the termination of a proceeding in court for the winding up of a company, a balance sheet shall be brought in by the liquidator of their receipts and payments, which shall be verified by affidavit, and the liquidator shall pass their final account and any balance due thereon shall be certified, and upon payment of the balance in such manner as the court shall direct, any recognizance entered into by the liquidator and their sureties may be vacated.

Prothonotary's Certificate of Dissolution

76.50 When a liquidator has passed their final account and any balance certified to be due thereon has been disbursed as the court directs, a certificate shall be issued by the Prothonotary that the affairs of the company have been completely wound up and, in case the company

has not already been dissolved, the liquidator shall, immediately after the certificate has become binding, apply to the court for an order that the company be dissolved from the date of the order.

Deposit of File

76.51 When the proceedings for winding up any company have been completed, the file of the proceedings and the book containing the official liquidator's account shall be deposited with the Prothonotary.

LAWYER OF LIQUIDATOR

Lawyer to Conduct Proceedings, Etc.

76.52 The lawyer of a liquidator shall conduct any proceeding as is ordinarily conducted by a lawyer; and where an attendance is required in court the liquidator need not attend in person, except where the liquidator's presence is necessary in addition to that of their lawyer, or the court shall direct the liquidator to attend.

FORMS

Forms

76.53 Until other forms are directed, the forms in use in winding-up proceedings in England, with such variations as may be necessary to adapt them to the practice under these rules and the Act, and as the circumstances of each case require, may be used.

DELEGATION

Delegation of Powers of Court

76.54 When a winding-up order has been made, the court may, by the order or by any subsequent order, refer and delegate to a referee any of the power conferred upon the court.

COSTS

Fees

76.55 The fees allowed to lawyers, counsel, sheriffs and the Prothonotary in a proceeding under the Act shall, so far as is applicable and unless otherwise directed by the court, be those authorized under these rules.

Taxation

76.56 Where an order is made by the court for the payment of any costs and unless otherwise directed, the same shall be taxed by the Prothonotary, subject to appeal from the taxation as in an ordinary proceeding in the court.

POWER OF COURT

Power of Court to Enlarge or Abridge Time

76.57 The power of the court to enlarge or abridge the time to do any act, take any proceeding, adjourn or review any proceeding, or give any directions to the conduct of the proceeding, is unaffected by these rules.

GENERAL DIRECTIONS

General Practice to Apply

76.58 The general practice and Rules of the Court shall, in cases not provided for by the Act or Rule 76, and so far as the same are applicable and not inconsistent with the Act or Rule 76, apply to any proceeding for winding up a company.

WINDING-UP ACT, CANADA

Made, framed and settled by the Judges of the Supreme Court of Prince Edward Island this 21st day of December 1989 to become effective on the coming into force of the new Rules of Civil Procedure with respect to proceedings commenced on or after that date, and all forms, rules and regulations heretofore made, framed and settled under the *Winding-up Act* shall cease to be in force except as to proceedings commenced before the coming into force of the new Rules of Civil Procedure.